

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

April 9, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-40301

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALBERT SMITH, III,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:03-CR-41-1  
\_\_\_\_\_

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Albert Smith, III, federal prisoner # 10498-078, appeals the district court's judgment denying his motion to reduce his sentence pursuant to 18 U.S.C. § 3582(C)(2) based on the amendment of the crack cocaine Sentencing Guidelines. Smith argues that in denying the motion, the district court treated the Guidelines as mandatory in violation of *United States v. Booker*, 543 U.S. 220 (2005) and *Kimbrough v. United States*, 552 U.S. 85 (2007), and thus, failed to consider the purpose of the amendment, which was to cure the disparity in

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

sentencing between crack and powdered cocaine. He asserted that his sentencing under the career offender Guideline did not preclude a reduction of his sentence under § 3582(c)(2).

Smith's argument that his sentencing under the career offender Guideline does not preclude a reduction of his sentence is foreclosed by this court's precedent. *See United States v. Anderson*, 591 F.3d 789, 790 & n.4, 791 & n.8. His arguments based on the *Booker* and *Kimbrough* decisions are foreclosed by our decision in *United States v. Dublin*, 572 F.3d 235, 236-29 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time in which to file a brief is DISMISSED AS MOOT.